RECENT IMPORTANT DECISIONS.

BANKS AND BANKING—POSTDATING CHECK WITHOUT FUNDS IN BANK.—Defendant was convicted of drawing and uttering a check on a bank, without funds to meet the same, in violation of Code, § 208. Upon appeal he was permitted to show that the check was given prior to its date, and that he had informed the payee at the time that he then had no funds in the bank. *Held,* the check became a mere promise on the part of the drawer to pay the amount, and did not come within the Code, § 208; and the check was only evidence of the debt. *State* v. *Winter* (S. C. 1914), 82 S. E. 419.

A date is not essential to the validity of a check. *Gordon* v. *Lansing Bank,* 133 Mich. 143. A bona fide holder of a postdated check may transfer it before its date. *Bill* v. *Stewart,* 156 Mass. 508. Such a transfer affords no cause of suspicion so as to put an indorsee on inquiry. *Brewster* v. *McCardell,* 8 Wend. 478; *Mayer* v. *Mode,* 14 Hun. 155; contra, *Mine* v. *Bank,* 44 Mich. 344. The courts have been at variance as to whether a draft on a bank payable at a future day is a check or a bill of exchange. In *Mayer* v. *Mode, supra,* a check postdated was given to Mayer, on an agreement by him to place the amount in the hands of the drawer before the date of the check. Mayer transferred the check to a third person who recovered upon it. It was held to be a bill of exchange payable at its date. Accord, *Bowen* v. *Newell,* 13 N. Y. 290; *Bank* v. *Henderson,* 46 Ga. 496; *Morrison* v. *Bailey,* 5 Ohio St. 13. In *Champion* v. *Gordon,* 70 Pa. St. 474, the court said, "what the drawer undertakes is, that on a day named he will have the amount of the check to his credit in the bank;" the instrument was held still to be a check. Accord, *Bank* v. *Wheaton,* 4 R. I. 30. The question usually has arisen in regard to presentment for payment during days of grace; if the instrument were a check the rule permitting days of grace would be inapplicable, for a check needs no acceptance and is payable on presentment.

BILLS AND NOTES—ELECTION UPON DEFAULT—NECESSITY OF NOTICE TO MAKER.—Defendant made his promissory note for two years in favor of plaintiff, with interest payable semi-annually. The note provided in case of default in payment of interest that both principal and interest would be due at the election of the holder. Interest was due on Jan. 24, 1914; on that day defendant mailed the interest money, and it reached plaintiff Jan. 25. Before receipt of this, plaintiff had elected to claim the principal due and had notified his attorney to so inform defendant. The attorney's letter reached defendant Jan. 26. *Held,* Although the defendant defaulted by not paying the interest on the day it was due, yet he could pay it at any later time before plaintiff had *manifested* the election to declare both sums due: and plaintiff's act in notifying the attorney was not such a manifestation. *Stalder* v. *Riverside Groves and Water Co.* (Cal. 1914) 140 Pac. 252.

A note stipulating that on non-payment of installment or interest the whole should be payable, matures on the first default in payment. *Ausem* v.

Byrd, 6 Ind. 475; *Billingsley* v. *Dean,* 11 Ind. 331; *Vette* v. *LaBarge,* 2 Mo. App. 906; *Mallon* v. *Stevens,* 6 Oh. Dec. 1042; *Battery Park* v. *Loughram,* 122 N. C. 668, 30 S. E. 17. But the principal sum does not become due *ipse facto* on such default. *Belloc* v. *Davis,* 38 Cal. 242; *Trinity Bank* v. *Haas,* 151 Cal. 556, 91 Pac. 385. The holder of a note or mortgage, before commencing suit, need not give notice to the defaulting maker of his election to declare the principal due for non-payment of interest. *Hewitt* v. *Dean,* 91 Cal. 5, 27 Pac. 423; *Clemens* v. *Luce,* 101 Cal. 432, 35 Pac. 1032. Commencement of an action would be notice of the exercise of the option. *Bank of Commerce* v. *Scofield,* 126 Cal. 156, 58 Pac. 451. The instant case recognizes this doctrine that notice *as such* is not an essential: but it decides that where the holder uses the method of notice to show his election, then notice is the only manifestation of that election, and must *reach* the defaulting maker before the latter has made good the default. Notifying an attorney of the intent to elect is not a sufficient manifestation, for the maker may rely on a waiver of the right on the default until he hears to the contrary. *Wall* v. *Marsh,* 68 Tenn. 438; *Adams* v. *Rutherford,* 13 Or. 78, 8 Pac. 896. The two doctrines thus make the distinction that where the maker is in default the holder may sue for the principal sum without further notice to the maker; but that if the holder refrains from suit until the maker is to be notified, then he may waive his right by failure to notify before he receives the interest money. The case seems sustained by *Trinity Bank* v. *Haas,* supra.

BILLS AND NOTES—GAMING OBLIGATIONS AFFECTING RIGHTS OF ACCOMMODATION INDORSER.—McDannald gave his note to the Citizen's Bank, and received a loan of $1,200, which he used for the purpose of stock gambling. Carpenter was an accommodation indorser on the note, and knew the purpose of the loan. The bank did not know this purpose. The Virginia Code, § 2836, declared void every contract where money is knowingly lent to be used in wagering. The note was protested for non-payment and the bank brought an attachment proceeding in equity, for the benefit of Carpenter, to subject an interest of McDannald in real estate to the payment of the debt. *Held,* in favor of the bank, irrespective of Carpenter's knowledge of the gambling. *Citizens National Bank* v. *McDannald* (Va. 1914), 83 S. E. 389.

Where a note is made entirely void, by statute, even a holder in due course cannot recover upon it. See comment in 12 MICH. L. REV. 408. The Virginia Code declares the note void only where the person lending the money knew the use to which it would be put. So the note in the instant case was undoubtedly valid in the hands of the Bank, which was a holder in due course. The purchaser of a note from the holder in due course secures it free from equities, even though he had knowledge of such equities. *Aragon Coffee Co.* v. *Rogers,* 105 Va. 51; *Black* v. *Bank,* 96 Md. 399, 54 Atl. 88; *Symonds* v. *Riley,* 188 Mass. 470; *Hillard* v. *Taylor,* 114 La. 883. But if the purchaser was a party to the fraud or illegal act in the first instance, then he is not protected. *Battersbee* v. *Calkins,* 128 Mich. 569, 87 N. W. 760; *Booher* v. *Allen,* 153 Mo. 613, 55 S. W. 238; *Hoye* v. *Kalashian,* 22 R. I. 101, 46 Atl. 271; *Andrews* v. *Robertson,* 111 Wis. 334, 87 N. W. 190. This is true